



**THE CITY OF IMPERIAL BEACH**

**REQUEST FOR PROPOSALS/ QUALIFICATIONS (RFP/Q) FOR**

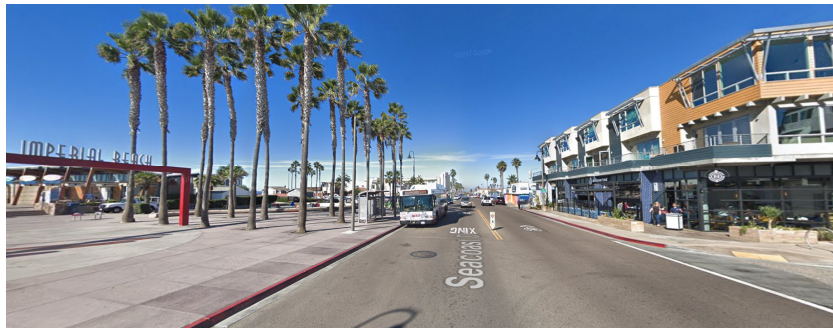
**PROFESSIONAL CONSULTANT SERVICES**

**TO ASSIST THE CITY IN THE DEVELOPMENT OF THE**

**2021-2029 CYCLE 6 IMPERIAL BEACH HOUSING ELEMENT**

**City of Imperial Beach  
Community Development Department  
825 Imperial Beach Blvd.  
Imperial Beach, CA 91932  
(619) 628-1354**

**August, 2019**



**TABLE OF CONTENTS**

<b>REQUEST FOR PROPOSALS/QUALIFICATIONS (RFP/Q) NOTICE</b>	<b>3</b>
<b>BACKGROUND INFORMATION</b>	<b>4</b>
<b>PROPOSAL REQUIREMENTS INCLUDING SCOPE OF WORK</b>	<b>5</b>
<b>SCHEDULE</b>	<b>6</b>
<b>COST PROPOSAL/BUDGET</b>	<b>6</b>
<b>APPLICABLE DOCUMENTS TO BE REVIEWED</b>	<b>6</b>
<b>SELECTION PROCESS AND EVALUATION CRITERIA</b>	<b>7</b>
<b>TERMS AND CONDITIONS</b>	<b>8</b>
<b>EQUAL OPPORTUNITY REQUIREMENTS</b>	<b>8</b>
<b>SAMPLE PROFESSIONAL SERVICES AGREEMENT</b>	<b>9</b>



## *City of Imperial Beach, California*

COMMUNITY DEVELOPMENT DEPARTMENT

825 Imperial Beach Blvd., Imperial Beach, CA 91932 Tel: (619) 628-1356 Fax: (619) 424-4093

### **NOTICE REQUEST FOR PROPOSALS AND QUALIFICATIONS (RFP/Q) TO PREPARE THE 2021-2029 CYCLE 6 IMPERIAL BEACH HOUSING ELEMENT**

**NOTICE IS HEREBY GIVEN** that the **City of Imperial Beach** invites proposals from qualified consulting firms that are able to engage our community leaders and citizens in developing the 2021-2019 Cycle 6 Housing Element and the associated environmental document. The previous 2013-2021 Cycle 5 Housing Element was adopted by the City Council on January 23, 2013 and was certified by the California Housing and Community Development (HCD) Department on February 21, 2013. Affordable housing as a State issue has recently been given increased scrutiny as demonstrated with the passage of the 2017-2018 State housing legislation packages. The Board of Directors for the San Diego Association of Governments (SANDAG) is scheduled to adopt the Regional Housing Needs Assessment (RHNA) on either October 11, 2019 or October 24, 2019. The State requires that Cycle 6 Housing Elements be certified 18 months after that date, i.e. April of 2021. The RHNA allocation for Imperial Beach will be significant. Imperial Beach faces a number of challenges in meeting RHNA targets. The City is virtually built out with limited vacant land to provide additional housing. The loss of redevelopment funding per AB 26 in 2012 has constrained funding for the production of affordable housing. Although Imperial Beach is a coastal community that potentially could attract an affluent population, the City has a significant portion of its population that is disadvantaged with a significant unemployment rate. It currently lacks a strong commercial tax base, although this should increase with new commercial development that is being proposed. Recognizing that Imperial Beach appears vulnerable to future Climate Change and Sea Level Rise (SLR) impacts, the City completed its SLR study in 2016 and is in the process of updating its Local Coastal Program (LCP)/General Plan to address these issues. The City adopted its Climate Action Plan (CAP) and Mobility Element on July 17, 2019 so that the City can remain competitive for future SANDAG grants. The complete RFP/Q and its submittal requirements will be posted on the City's webpage under the Housing Programs link at: <http://www.imperialbeachca.gov/>. Consultant teams with experience in Southern California housing element work will be favorably considered.

Sealed proposals must be submitted by 5:00 p.m. Monday, September 9, 2019 to the project manager:

Steve Dush  
Assistant City Manager/Community Development Director  
City of Imperial Beach  
825 Imperial Beach Blvd.  
Imperial Beach CA 91932

619-628-1354  
[sdush@imperialbeachca.gov](mailto:sdush@imperialbeachca.gov)

## **BACKGROUND INFORMATION:**

The City of Imperial Beach is a lower income coastal community 4.5 square miles in area with a population of 26,324 (2010 US Census) located at the southwest corner of the continental United States in San Diego County.

The previous 2013-2021 Cycle 5 Housing Element was adopted by the City Council on January 23, 2013 and was certified by the California Housing and Community Development (HCD) Department on February 21, 2013.



Affordable housing as a State issue has recently been given increased scrutiny as demonstrated with the passage of the 2017-2018 State housing legislation packages. The Board of Directors for the San Diego Association of Governments (SANDAG) is scheduled to adopt the Regional Housing Needs Assessment (RHNA) on either October 11, 2019 or October 24, 2019. The State requires that Cycle 6 Housing Elements be certified 18 months after that date, i.e. April of 2021. The RHNA allocation for Imperial Beach will be significant. Imperial Beach faces a number of challenges in meeting RHNA targets. The City is virtually built out with limited vacant land to provide additional housing. The loss of redevelopment funding per AB 26 in 2012 has constrained funding for the production of affordable housing. Although Imperial Beach is a coastal community that potentially could attract an affluent population, the City has a significant portion of its population that is disadvantaged with a significant unemployment rate. It lacks a strong commercial tax base, although this should increase with new commercial development that is being proposed. Recognizing that Imperial Beach appears vulnerable to future Climate Change and Sea Level Rise (SLR) impacts, the City completed its SLR study in 2016 and is in the process of updating its Local Coastal Program (LCP)/General Plan to address these issues. The City adopted its Climate Action Plan (CAP) and Mobility Element on July 17, 2019 so that the City can remain competitive for future SANDAG grants.

**Adopted:**  
January 23, 2013  
(Resolution No. 2013-7287)  
**HCD Certified:**  
February 21, 2013

**5<sup>th</sup> Cycle  
Year 2013 – 2021**

**Veronica Tam and Associates LLC**  
107 S. Fair Oaks Avenue, Suite 212  
Pasadena, CA 91105  
(626) 304-0440

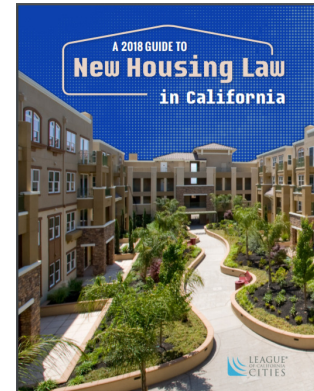


## **PROPOSAL SUBMITTAL REQUIREMENTS**

Respondents are required to follow the format specified below. The contents of the proposal must be clear, concise, and complete. Each section of the submittal shall be tabbed according to the numbering system shown below to aid in expeditious review.

**Proposal Cover** – Label the submittal as “**2021-2029 Cycle 6 Imperial Beach Housing Element Proposal**” along with the proposer's business name, address, email address, telephone number, and submittal date.

- I. **Introductory Letter** - The cover letter should be brief (two pages maximum) identifying the principal and project manager of the firm and including the location of the firm's offices and contact information. Provide any changes to the format or deviations from the RFQ/P and explain its rationale in the cover letter. Identify any conflicts of interest that the firm and any of its sub-consultants may have with officials of the City of Imperial Beach.
- II. **Proposer's Scope of Work** - Describe the Scope of Work proposed and include state and federal statutory requirements (including the 2017-2018 State housing legislation packages) with which housing elements need to address. Include a discussion of the relationship of the housing element to the other elements of the general plan, the Coastal Act, and the zoning ordinance. Discuss any challenges in achieving the Regional Housing Needs Assessment (RHNA) as allocated by the San Diego Association of Governments (SANDAG). Describe the firm's experience in assessing a city's previous housing element including its goals, policies, updating the adequate residential sites inventory (including HCD's requirements on reasonable sites), and programs and issues encountered. Provide a list of tasks that would be consistent with the requirements of the California Housing Element Law (Government Code 65580 et seq), including items to be covered in the community profile, identifying housing constraints, identifying housing opportunities and resources, public participation strategy/community outreach (including working with a possible steering committee), development of the housing plan and the California Environmental Quality Act (CEQA) document.
- III. **Qualifications and Experience** - This section shall contain a description of the consultant's experience in providing housing element work or other relevant consulting services for public entities. The firms' experiences specifically related to the scope of work shall be listed consecutively with the awarding and completion dates noted. Each listed experience shall include the name(s) and telephone number(s) of the firm's project manager and the client's project manager for each listing. Describe the experience and the tasks that each sub-consultant will perform.
- IV. **List of Project Personnel** - This list should include the identification of the contact person with primary responsibility for this project, other project personnel, including partners and/or sub-consultants, and their individual areas of responsibility. The persons listed will be considered as committed to the project. A résumé for each professional and technical person assigned to the project, including partners and/or sub-consultants, shall be submitted. The résumés shall include at least two references from previous assignments.
- V. **Organization Chart** - An organization chart containing the names of all key personnel, joint



venture partners, and sub-consultants with titles and their specific task assignment for this project shall be provided in this section.

- VI. Insurance Coverage** - Description of insurance coverage for prime respondent and co-venture partner(s) (types of coverage and policy limits, deductible, exclusions, and outstanding claims);
- VII. Schedule:** The City anticipates awarding the contract in October of 2019. The deadline to have the 2021-2029 Cycle 6 Housing Element certified by the California Department of Housing and Community Development (HCD) is April 15, 2021. The City anticipates having the draft housing element submitted to HCD in August 2020 for their 90-day review and adopted by the City Council in November or December of 2020 in order to have the final housing element submitted to HCD for their 90 day certification review pursuant to Government Code § 65585.
- VIII. Cost Proposal/Budget:** Submit a cost proposal that includes a budget reflecting the tasks provided in the Scope of Work. Housing Element work appears to range from \$45,000 to \$80,000. The consultant contract may not necessarily be awarded to the lowest cost proposal but rather to the best qualified firm with consideration given to a reasonable cost proposal. The City may pursue a SB 2 grant application in order to assist in the funding for this project.



### **APPLICABLE DOCUMENTS TO BE REVIEWED**

It is advisable that the consultant be familiar with the following documents and information:

- 2013 – 2021 Cycle 5 Imperial Beach Housing Element  
[https://www.imperialbeachca.gov/vertical/Sites/%7B6283CA4C-E2BD-4DFA-A7F7-8D4ECD543E0F%7D/uploads/Final\\_IB\\_HE\\_2013-2021.pdf](https://www.imperialbeachca.gov/vertical/Sites/%7B6283CA4C-E2BD-4DFA-A7F7-8D4ECD543E0F%7D/uploads/Final_IB_HE_2013-2021.pdf)
- 2018 Imperial Beach Housing Element Annual Progress Report (APR)  
[https://www.imperialbeachca.gov/vertical/Sites/%7B6283CA4C-E2BD-4DFA-A7F7-8D4ECD543E0F%7D/uploads/Imperial\\_Beach\\_2018\\_Housing\\_Element\\_Annual\\_Progress\\_Report.pdf](https://www.imperialbeachca.gov/vertical/Sites/%7B6283CA4C-E2BD-4DFA-A7F7-8D4ECD543E0F%7D/uploads/Imperial_Beach_2018_Housing_Element_Annual_Progress_Report.pdf)
- Imperial Beach Sea Level Rise (SLR) Assessment Report 2016  
[http://www.imperialbeachca.gov/vertical/sites/%7B6283CA4C-E2BD-4DFA-A7F7-8D4ECD543E0F%7D/uploads/100516\\_IB\\_Sea\\_Level\\_Rise\\_Assessment\\_FINAL.pdf](http://www.imperialbeachca.gov/vertical/sites/%7B6283CA4C-E2BD-4DFA-A7F7-8D4ECD543E0F%7D/uploads/100516_IB_Sea_Level_Rise_Assessment_FINAL.pdf)
- Imperial Beach General Plan/ Local Coastal Plan (LCP)  
[https://www.imperialbeachca.gov/vertical/sites/%7B6283CA4C-E2BD-4DFA-A7F7-8D4ECD543E0F%7D/uploads/General\\_Plan\\_LCP\\_Updated\\_2015\(1\).pdf](https://www.imperialbeachca.gov/vertical/sites/%7B6283CA4C-E2BD-4DFA-A7F7-8D4ECD543E0F%7D/uploads/General_Plan_LCP_Updated_2015(1).pdf)
- 2019 Resilient Imperial Beach (RIB) LCP/Climate Action Plan (CAP)  
[https://www.imperialbeachca.gov/vertical/Sites/%7B6283CA4C-E2BD-4DFA-A7F7-8D4ECD543E0F%7D/uploads/Attach\\_3\\_Exhibit\\_C\\_CAP\\_Climate\\_Action\\_Plan\\_6.19.19\\_tra ck.pdf](https://www.imperialbeachca.gov/vertical/Sites/%7B6283CA4C-E2BD-4DFA-A7F7-8D4ECD543E0F%7D/uploads/Attach_3_Exhibit_C_CAP_Climate_Action_Plan_6.19.19_tra ck.pdf)
- Imperial Beach Municipal Code (IBMC) Title 19 (Zoning)  
<http://qcode.us/codes/imperialbeach/view.php?topic=19&frames=on>

**PUBLIC DISCLOSURE**

As a general rule, all documents received by the City of Imperial Beach are considered public records and will be made available for public inspection and copying upon request. If you consider any documents submitted with your response to be proprietary or otherwise confidential, please submit a written request for a determination of whether the documents can be withheld from public disclosure no later than ten (10) days prior to the due date of your proposal. If you do not obtain a determination of confidentiality prior to the submittal deadline, any document(s) submitted will be subject to public disclosure.

**PROPOSAL/CONSULTANT SELECTION PROCESS AND EVALUATION CRITERIA**

A selection committee composed of representatives of the City and other agencies and organizations that are involved with housing programs may be convened to review and evaluate the proposals. The selection committee may "short-list" the most qualified firms, utilizing the selection criteria listed below. In the event that an interview is required by the selection committee, it is mandatory that all principal firms and the designated project manager attend.

Evaluation of the submittals will consider the following:

- Conformance to the RFQ/P format;
- Organization, presentation, and content of the submittal;
- Specialized experience and technical competence of the firm(s), (including principal firms, joint venture-partners, and sub-consultants), considering the types of service required; the complexity of the project; record of performance; and the strength of the key personnel who will be dedicated to the project;
- Proposed overall strategic plan to accomplish the work in a timely and competent manner, while demonstrating the ability to be adaptive throughout the process;
- Knowledge and understanding of the local, social, economic, and political environment;
- Reference checks, financial stability of the principal consultant and/or a consultant team;
- Demonstrated competency in the housing/planning field;
- Skilled at communicating complex housing issues in a public presentation context; and
- Technical report writing.

The tentative schedule for the solicitation, receipt, evaluation of the submittals, and the selection of the consultant is provided as follows. (Note: Dates are subject to change.)

Distribution/Advertisement	August 9, 2019
Deadline for Submittal of Qualifications/Proposals	September 9, 2019
Submittal Review, Interview & Negotiation	September 2019
City Council Approval	October 2, 2019
Contract Signed/Notice to Proceed	October 7 2019

**Submission:** One original and (6) hard copies of the submittal and one PDF file of the proposal on a flash drive shall be delivered no later than 5:00 p.m. on the due date listed above to the project manager and contact person below. Copies received by FAX shall not be deemed received. Incomplete submittals, incorrect information, or late submittals shall be cause for disqualification.

Mr. Steve Dush, AICP  
Assistant City Manager/Community Development Director  
City of Imperial Beach  
825 Imperial Beach Blvd.  
Imperial Beach, CA 91932  
(619) 628-1355  
[sdush@imperialbeachca.gov](mailto:sdush@imperialbeachca.gov)

Questions or inquiries regarding this RFQ/P shall be submitted via email no later than 4 business days prior to the submittal deadline to the project manager listed above.

### **TERMS AND CONDITIONS**

Issuance of this RFQ/P does not commit the City of Imperial Beach to award a contract, to pay any costs incurred in the preparation of a response to this request, or to procure a contract for services. All respondents should note that the execution of any contract pursuant to this RFQ/P is dependent upon the approval of the City Council of the City of Imperial Beach.

The City retains the right to reject any or all submittals. Selection is also dependent upon the negotiation of a mutually acceptable contract with the successful respondent. A sample contract is attached hereto. Each submittal shall be valid for not less than ninety (90) days from the date of receipt and, if the proposal is selected, it shall be effective for the duration of the contract.

### **EQUAL OPPORTUNITY PROGRAM REQUIREMENTS**

The City of Imperial Beach is committed to equal opportunity in solicitation of professional service consultants to assure that consultants doing business with, or receiving funds from, the City is equal opportunity contractors and employers. The City encourages prime consultants to share this commitment.

The selected respondent(s) and each of its (their) Sub-consultants and/or co-venture partners, shall comply with Title VII of the Civil Rights Act of 1964, as amended, Executive Orders 11246, 11375, and 12086, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations hereinafter enacted. The respondent shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, medical condition or place of birth.





## **City of Imperial Beach**

### **AGREEMENT FOR PROFESSIONAL SERVICES**

#### **TO PREPARE THE 2021-2019 CYCLE 6** **IMPERIAL BEACH HOUSING ELEMENT** **AND RELATED ENVIRONMENTAL DOCUMENTS**

This Agreement, entered into this \_\_\_\_ day of October, 2019, by and between the **CITY OF IMPERIAL BEACH** (hereinafter referred to as "**CITY**"), and **Housing Element and Associates** (hereinafter referred to as "**CONSULTANT**") (collectively "**PARTIES**").

#### **RECITALS**

**WHEREAS**, CITY recognizes that Government Code Section 65580 et seq requires the preparation, adoption, and implementation of a housing element as part of the city's general plan and it requires the document to be reviewed and revised every eight years; and

**WHEREAS**, CITY recognizes that the preparation of a housing element requires specialized planning knowledge and skills and desires to employ a CONSULTANT to furnish professional housing element services; and

**WHEREAS**, CONSULTANT is a limited liability company and has represented that CONSULTANT possesses the necessary qualifications to provide such services; and

**WHEREAS**, CITY, on October 2, 2019, adopted Resolution No. 2019-XXXX, authorizing the City Manager to enter into a professional services agreement to have CONSULTANT provide the services as hereinafter set forth.

**NOW, THEREFORE**, IT IS MUTUALLY **AGREED** THAT CITY DOES HEREBY RETAIN CONSULTANT ON THE FOLLOWING TERMS AND CONDITIONS:

#### **Section 1. EMPLOYMENT OF CONSULTANT.**

CITY hereby agrees to engage CONSULTANT and CONSULTANT hereby agrees to perform the services hereinafter set forth, in accordance with all terms and conditions contained herein. CONSULTANT represents that all professional services required hereunder will be performed directly by CONSULTANT, or under direct supervision of CONSULTANT. In the event CONSULTANT is acquired by a subsequent firm, CITY retains the option to terminate the provisions of this contract pursuant to Section 16.

#### **Section 2. SCOPE OF SERVICES AND COMPENSATION.**

- A. CONSULTANT shall provide services as described in Exhibit "A" entitled "**2021-2029 Cycle 6 Imperial Beach Housing Element Proposal**," attached hereto and made a part hereof.
- B. As additional consideration, CONSULTANT and CITY agree to abide by the terms and conditions contained in this Agreement.

- C. CONSULTANT will, in a professional manner, furnish all labor and all personnel; all supplies, materials, equipment, printing, vehicles, transportation, office space, and facilities; all testing, analyses, and calculations; and all other means, except as otherwise expressly specified to be furnished by CITY, that are necessary or proper to complete the work and provide the required professional services.
- D. CONSULTANT shall be compensated for work completed, not to exceed \$      ,000.00 for basic services rendered under this Section 2, as more particularly described in Exhibit A. CONSULTANT shall be compensated for additional services only upon prior written approval of CITY.
- E. CONSULTANT shall submit monthly statements for basic and additional services rendered in accordance with this Agreement. Payments to CONSULTANT will be made by CITY within thirty (30) days of receipt of invoice. CITY agrees that the CONSULTANT's billings are correct unless CITY, within ten (10) days from the date of receipt of such billing, notifies CONSULTANT in writing of alleged inaccuracies, discrepancies, or errors in billing. In the event CITY disputes part or all of an invoice, CITY shall pay the undisputed portion of the invoice within the above mentioned thirty days.

### **Section 3. PROJECT COORDINATION AND SUPERVISION.**

The Assistant City Manager/Community Development Director, Steve Dush, is hereby designated as the PROJECT COORDINATOR for CITY and will monitor the progress and execution of this Agreement.

### **Section 4. LENGTH OF CONTRACT.**

The contract between CONSULTANT and CITY will be terminated upon completion of the work as set forth in Section 2 above or in accordance with Section 16 below.

Should CONSULTANT begin work on any phase in advance of receiving written authorization to proceed, any professional services performed by CONSULTANT in advance of the said date of authorization shall be considered as having been done at CONSULTANT'S own risk and as a volunteer unless said professional services are so authorized.

Any delay occasioned by causes beyond the control of CONSULTANT may be reason for the granting of extension of time for the completion of the aforesaid services. When such delay occurs, CONSULTANT shall immediately notify the PROJECT COORDINATOR in writing of the cause and the extent of the delay, whereupon the PROJECT COORDINATOR shall ascertain the facts and the extent of the delay and determine whether an extension of time for the completion of the professional services is justified by the circumstances.

### **Section 5. CHANGES.**

If changes in the work seem merited by CITY or CONSULTANT, and informal consultations with the other party indicate that a change is warranted, it shall be processed by CITY in the following manner: a letter outlining the changes shall be forwarded to CITY by CONSULTANT with a statement of estimated changes in fee or time schedule. An amendment to the Agreement shall be prepared by CITY and executed by both parties before performance of such services or CITY will not be required to pay for the changes in the scope of work. Such amendment shall not render

ineffective or invalidate unaffected portions of this Agreement.

#### **Section 6. OWNERSHIP OF DOCUMENTS.**

All documents, data, studies, drawings, maps, models, photographs and reports prepared by CONSULTANT under this Agreement shall be considered the property of CITY. CONSULTANT may retain such copies of said documents and materials as desired but shall deliver all original materials to CITY.

#### **Section 7. AUDIT OF RECORDS.**

7.1. At any time during normal business hours and as often as may be deemed necessary, the CONSULTANT shall make available to a representative of CITY for examination all of its records with respect to all matters covered by this Agreement and shall permit CITY to audit, examine and/or reproduce such records. CONSULTANT shall retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

7.2. The CONSULTANT shall include the CITY's right under this section in any and all of their subcontracts, and shall ensure that these sections are binding upon all subcontractors.

#### **Section 8. PUBLICATION OF DOCUMENTS.**

Except as necessary for performance of service under this Agreement, no copies, sketches, or graphs of materials, including graphic art work, prepared pursuant to this Agreement shall be released by CONSULTANT to any other person or agency without CITY's prior written approval. All press releases, including graphic display information to be published in newspapers or magazines, shall be approved and distributed solely by CITY, unless otherwise provided by written agreement between the parties. After project completion, CONSULTANT may list the project and the general details in its promotional materials.

#### **Section 9. COVENANT AGAINST CONTINGENT FEES.**

CONSULTANT declares that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach of violation of this warranty, CITY shall have the right to annul this Agreement without liability, or, at its sole discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

#### **Section 10. NO ASSIGNMENTS.**

Neither any part nor all of this Agreement may be assigned or subcontracted, except as otherwise specifically provided herein, or to which CITY, in its sole discretion, consents to in advance thereof in writing. Any assignment or subcontracting in violation of this provision shall be void.

#### **Section 11. INDEPENDENT CONTRACTOR.**

At all times during the term of this Agreement, CONSULTANT and any subcontractors

employed by CONSULTANT shall be an independent contractor and shall not be an employee of the CITY. CITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT'S services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which CONSULTANT accomplishes its services. Any provision in this Agreement that may appear to give CITY the right to direct CONSULTANT or sub consultant as to the details of doing the work or to exercise a measure of control over the work means that CONSULTANT shall follow the direction of the CITY as to end results of the work only.

Neither CONSULTANT nor CONSULTANT's employees shall in any event be entitled to any benefits to which CITY employees are entitled, including, but not limited to, overtime, any retirement benefits, workers' compensation benefits, any injury leave or other leave benefits, CONSULTANT being solely responsible for all such matters, as well as compliance with social security and income tax withholding and all other regulations and laws governing such matters.

## **Section 12. LICENSES, PERMITS, ETC.**

CONSULTANT represents and declares to CITY that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for CONSULTANT to practice its profession.

## **Section 13. INSURANCE.**

CONSULTANT shall maintain, during the term of this Agreement, Workers' Compensation and Employer's Liability Insurance as prescribed by applicable law. Upon request, CITY shall be provided with satisfactory evidence that premiums have been paid and shall deliver to CITY certificates of insurance and endorsements as to each policy. Each certificate of insurance shall provide that the policy will not be materially altered or cancelled without first giving 10 days written notice to the CITY by certified mail. Coverage shall include appropriate waivers of subrogation as to the CITY. CONSULTANT agrees to this requirement irrespective of any other similar obligation imposed on others and CONSULTANT agrees to do so in conformity with the requirements set forth herein including those requirements set forth for certificates of insurance.

CONSULTANT shall assume liability for the wrongful or negligent acts, errors and omissions of its officers, agents and employees and subcontractors in regard to any functions or activity carried out by them on behalf of CITY pursuant to the terms of this Agreement.

## **Section 14. CONSULTANT NOT AN AGENT.**

Except as CITY may specify in writing, CONSULTANT shall have no authority, expressed or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, expressed or implied, pursuant to this Agreement to bind CITY to any obligation whatsoever.

## **Section 15. INDEMNITY.**

To the fullest extent permitted by law, CONSULTANT shall indemnify, defend, and hold harmless the CITY, and their respective officers, officials, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and

subcontractors in the performance of services under this AGREEMENT. CONSULTANT's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the active or sole negligence or willful misconduct by the CITY, or their respective elected officials, officers, agents, and employees. CONSULTANT's indemnification obligations shall not be limited by the insurance provisions of this AGREEMENT. The PARTIES expressly agree that any payment, attorney's fees, costs or expense CITY incurs or makes to or on behalf of an injured employee under the CITY's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this AGREEMENT.

#### **Section 16. TERMINATION.**

CITY may terminate this Agreement at any time by giving ten (10) days' written notice to CONSULTANT of such termination and specifying the effective date thereof at least ten (10) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports and other materials prepared by CONSULTANT shall, at the option of CITY, become the property of CITY. If this Agreement is terminated by CITY as provided herein, CONSULTANT will be paid an amount which bears the same ratio to the total compensation as the services actually performed would bear to the total services of CONSULTANT covered by this Agreement, less payments of compensation previously made.

Should CONSULTANT be in default of any covenant or condition hereof, CITY may immediately terminate this AGREEMENT for cause if CONSULTANT fails to cure the default within ten (10) calendar days of receiving written notice of the default.

#### **Section 17. NON-DISCRIMINATION.**

CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, nor shall CONSULTANT discriminate against any qualified individual with a disability. CONSULTANT will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin and shall make reasonable accommodation to qualified individuals with disabilities. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by CITY setting forth the provisions of this non-discrimination clause.

#### **Section 18. GENERAL CONDITIONS.**

CONSULTANT shall provide no services for any private client within the corporate boundaries of CITY during the period that this Agreement is in effect, nor shall CONSULTANT, without, previous written permission from the PROJECT COORDINATOR, review any plan, map or other work which to the best of CONSULTANTS knowledge has been submitted by a private client for which the CONSULTANT has performed work within the previous 12 months or anticipates performing work in the succeeding 12 months. CONSULTANT shall immediately notify the PROJECT COORDINATOR in writing whenever CONSULTANT has reason to believe that aforementioned circumstance exists. CONSULTANT knows of no interests where it holds nor of any relationship it has or may have that would constitute a conflict of CONSULTANT performing the



duties set forth in this Agreement solely in the best interest of CITY.

#### **Section 19. OFFICE SPACE AND CLERICAL SUPPORT.**

Consultant shall provide its own office space and clerical support at its sole cost and expense.

#### **Section 20. SUBCONTRACTORS.**

20.1. The CONSULTANT's hiring or retaining of third parties (i.e. subcontractors) to perform services related to this Agreement is subject to prior approval by the CITY.

20.2. All contracts entered into between the CONSULTANT and its subcontractor shall also provide that each subcontractor shall obtain insurance policies which shall be kept in full force and effect during any and all work related to this Agreement and for the duration of this Agreement. The CONSULTANT shall require the subcontractor to obtain all policies described in Section 13 above in the amounts required by the CITY, which shall not be greater than the amounts required of the CONSULTANT.

20.3. In any dispute between the CONSULTANT and its subcontractor, the CITY shall not be made a party to any judicial or administrative proceeding to resolve the dispute. The CONSULTANT agrees to defend and indemnify the CITY as described in Section 15 of this Agreement should the CITY be made a party to any judicial or administrative proceeding to resolve any such dispute.

#### **Section 21. CONFIDENTIAL RELATIONSHIP.**

CITY may from time to time communicate to CONSULTANT certain information to enable Consultant to effectively perform the services. CONSULTANT shall treat all such information as confidential, whether or not so identified, and shall not disclose any part thereof without the prior written consent of CITY. CONSULTANT shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services. The foregoing obligation of this Section 21, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information (ii) is, through no fault of CONSULTANT, hereafter disclosed in publicly available sources of information; (iii) is now in the possession of CONSULTANT without any obligation of confidentiality; or (iv) has been or is hereafter rightfully disclosed to CONSULTANT by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party.

CONSULTANT shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this contract without the prior written consent of CITY. In its performance hereunder, CONSULTANT shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

#### **Section 22. MEDIATION.**

In the event of a dispute between CITY and CONSULTANT concerning the terms of this Agreement or its performance, the parties may, but are not required to, agree to submit such dispute to mediation. If the Parties agree to mediation, CITY and CONSULTANT agree to cooperate in good faith to promptly select a mediator, to schedule a mediation session, and to attempt to settle

the claim or dispute through mediation.

### **Section 23. NOTICES.**

All communications to either party by the other party shall be deemed made when received by such party at its respective name and address, as follows:

CITY

Steve Dush, Assistant City Manager/  
Community Development Director  
City of Imperial Beach  
825 Imperial Beach Blvd.  
Imperial Beach CA 91932

CONSULTANT

Housing Expert  
Principal  
Housing Element & Associates  
123 Fair Housing Blvd.  
RHNA, CA 91111

Any such written communications by mail shall be conclusively deemed to have been received by the addressee five days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above.

### **Section 24. CALIFORNIA LAW; VENUE.**

This Agreement and its performance shall be governed, interpreted, construed, and regulated by the laws of the State of California. Any action brought to enforce or interpret any portion of this Agreement shall be brought in the county of San Diego, California. CONSULTANT hereby waives any and all rights it might have pursuant to California Code of Civil Procedure § 394.

### **Section 25. ENTIRE AGREEMENT.**

This Agreement, and its Attachments and Exhibits, set forth the entire understanding of the parties. There are no other understandings, terms or other agreements expressed or implied, oral or written. The following attachments are a part of this Agreement: **Proposal dated August 26, 2019.** No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the PARTIES, their officers, agents, or employees shall be valid unless agreed to in writing by both PARTIES.

### **Section 26. SEVERABILITY.**

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion shall be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement shall continue in full force and effect.

### **Section 27. TIME IS OF ESSENCE.**

Time is of the essence for each and every provision of this agreement that states a time for performance and for every deadline imposed by the PROJECT COORDINATOR.

### **Section 28. COMPLIANCE WITH LAW.**

CONSULTANT shall comply with applicable laws in effect at the time the services are performed hereunder which, to the best of its knowledge, information and belief, apply to its obligations under this Agreement.

**Section 29. STATEMENT OF EXPERIENCE.**

By executing this Agreement, CONSULTANT represents that it has demonstrated trustworthiness and possesses the quality, fitness, and capacity to perform the Agreement in a manner satisfactory to CITY. CONSULTANT represents that its financial resources, surety and insurance experience, service experience, completion ability, personnel, current workload, experience in dealing with private owners, and experience in dealing with public agencies all suggest that CONSULTANT is capable of performing the proposed contract and has a demonstrated capacity to deal fairly and effectively with and to satisfy a public agency.

**Section 30. CONFLICTS OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.**

During the term of this Agreement, CONSULTANT shall not act as consultant or perform services of any kind for any person or entity whose interests conflict in any way with those of the CITY. CONSULTANT shall at all times comply with the terms of the Political Reform Act and the local conflict of interest ordinance. CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. CONSULTANT represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the Agency.

CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act and local ordinance. Specifically, CONSULTANT shall file Statements of Economic Interest with the City Clerk of the CITY in a timely manner on forms which CONSULTANT shall obtain from the City Clerk.

**Section 31. RESPONSIBILITY FOR EQUIPMENT.**

CITY shall not be responsible nor held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by CONSULTANT or any of CONSULTANT's employees or subcontractors, even if such equipment has been furnished, rented, or loaned to CONSULTANT by CITY. The acceptance or use of any such equipment by CONSULTANT, CONSULTANT's employees, or subcontractors shall be construed to mean that CONSULTANT accepts full responsibility for and agrees to exonerate, indemnify and hold harmless CITY from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment.

**Section 32. NO WAIVER.**

No failure of either the CITY or the CONSULTANT to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement shall constitute a waiver of any such breach of such covenant, term or condition.

**Section 33. DRAFTING AMBIGUITIES.**

The PARTIES agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either

Party by reason of the extent to which each Party participated in the drafting of the Agreement.

**Section 34. CONFLICTS BETWEEN TERMS.**

If an apparent conflict or inconsistency exists between the main body of this Agreement and the Exhibits, the main body of this Agreement shall control. If a conflict exists between an applicable federal, state, or local law, rule, regulation, order, or code and this Agreement, the law, rule, regulation, order, or code shall control. Varying degrees of stringency among the main body of this Agreement, the Exhibits, and laws, rules, regulations, orders, or codes are not deemed conflicts, and the most stringent requirement shall control. Each Party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Agreement.

**Section 35. EXHIBITS INCORPORATED.**

Exhibit "A" is incorporated into the Agreement by this reference.

**Section 36. SIGNING AUTHORITY.**

The representative for each Party signing on behalf of a corporation, partnership, joint venture or governmental entity hereby declares that authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party or PARTIES hereto harmless if it is later determined that such authority does not exist.

**IN WITNESS WHEREOF** the parties hereto have executed this contract the day and year first hereinabove written.

**CITY OF IMPERIAL BEACH:**

A municipal corporation

**CONSULTANT:**

Housing Element and Associates LLC

\_\_\_\_\_  
Andy Hall, City Manager

\_\_\_\_\_  
XXX /Principal

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Jennifer M. Lyon, City Attorney

\_\_\_\_\_  
Steve Dush, Assistant City Manager/  
Community Development Director

**ACKNOWLEDGMENT**

State of California     )  
County of San Diego    )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

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State of California     )  
County of San Diego    )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

---

State of California     )  
County of San Diego    )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



**EXHIBIT "A"**

**[2021-2029 Cycle 6 Imperial Beach Housing Element Proposal]**